

Application No: 11/2017N

Location: Fields House, CHAPEL LANE, BADDILEY, CW5 8PT

Proposal: Outline Planning- 3 Bedroom dormer bungalow(for wheelchair user and his family)

Applicant: Mr Dan Cundall

Expiry Date: 30-Aug-2011

### **MAIN ISSUES**

**The main issues are:-**

- **Principle of the development**
- **Design and layout,**
- **Impact on highway safety,**
- **Living conditions,**
- **Ecology,**
- **Trees and landscape**
- **Contaminated land.**

### **SUMMARY RECOMMENDATION**

**Approved subject to conditions.**

### **REFERRAL**

This application is referred to the Strategic Planning Board because the development is a departure from the Local Plan.

### **1. SITE DESCRIPTION AND DETAILS OF PROPOSAL**

The application relates to a paddock area, to the front of an existing property known as Fields Farm off Chapel Lane in Baddiley, which lies to the north of the site. The access track to this property runs along the eastern site boundary. The site has a frontage to Chapel Lane to the south, and is surrounded by agricultural land to the west, and on the opposite side of Chapel Lane. The boundaries comprise native hedgerows to the south and west and post and rail fencing to the access track to the east and the domestic curtilage of Fields Farm to the north.

This application seeks outline consent to develop the site for a single dwelling for a disabled person and his family.

### **2. RELEVANT PLANNING HISTORY**

There are no relevant previous applications relating to this site.

### **3. PLANNING POLICIES**

The development plan includes the North West of England Plan Regional Spatial Strategy 2021 (RSS) and the Borough of Crewe and Nantwich Replacement Local Plan 2011 (LP). The relevant development plan policies are:

#### **Regional Spatial Strategy**

DP1 (Spatial Principles)  
DP2 (Promote Sustainable Communities)  
DP4 (Make the Best use of Existing Resources and Infrastructure)  
DP5 (Manage Travel Demand)  
DP7 (Promote Environmental Quality)  
DP8 (Mainstreaming Rural Issues)  
DP9 (Reduce Emissions and Adapt to Climate Change)  
RDF2 (Rural Areas)  
L5 (Affordable Housing)  
MCR4 (South Cheshire)

#### **Cheshire Replacement Waste Local Plan**

Policy 11A (Development and Waste Recycling)

#### **Borough of Crewe and Nantwich Replacement Local Plan 2011**

BE.1 (Amenity)  
BE.2 (Design Standards)  
BE.3 (Access and Parking)  
BE.4 (Drainage, Utilities and Resources)  
BE.6 (Development on Potentially Contaminated Land)  
TRAN.9 (Car Parking Standards)  
NE.2 (Open Countryside)  
NE.5 (Nature Conservation and Habitats)  
NE.9 (Protected Species)  
RES.5 (Housing in the Open Countryside)

#### **Other Material Considerations**

PPS1 (Delivering Sustainable Development)  
PPS3 (Housing)  
PPS7 (Sustainable Development in Rural Areas)  
PPS9 (Biodiversity and Geological Conservation)  
PPG13 (Transport)

#### **4. OBSERVATIONS OF CONSULTEES**

##### **Highway Authority:**

##### **Environmental Health:**

No objection subject to the following comments:

- The application is for a new residential property which is a sensitive end use and could be affected by any contamination present.
- As such, and in accordance with PPS23, this section recommends that should any adverse ground conditions be found during the excavation works, all work in that area should cease and Environmental Health should be contacted for further advice.
- Construction hours (and associated deliveries to the site) shall be restricted to 08:00 to 18:00 hours Monday to Friday, 09:00 to 14:00 hours Saturday, with no working Sundays or Bank Holidays.

#### **5. VIEWS OF THE PARISH COUNCIL**

The application was considered in depth by Sound & District Parish Council and the Meeting unanimously agreed to 'Support' the application.

#### **6. OTHER REPRESENTATIONS**

Letters of support have been received from 3 Barracks Lane, 16 Baddiley Close, 14 Jan Palach Avenue, Fir Tree Farm, and Springfield making the following points:

- Access is easily modified from the farm drive to reach the position although the quality of the road surface in Chapel lane is not good for a wheelchair
- The building will not overlook anyone and in all ways will be an ideal position for the potential occupier
- Planning permission should be given as soon as possible. The family deserve all the help they can get.
- Both Dan and his brother Mathew have made the very best of their situation.
- Dan has been looking for a suitable but affordable home for some time unsuccessfully
- It would take a great deal of sense for them to travel to work together at the NMC in Winsford and save the charity money on transit costs.
- Please support Dan's plans and give the family the support that they surely deserve.
- Dan is an outstanding credit to this community and his family, persistently working against his severe disability to lead a life of independence that many would consider impossible given the same restrictions.
- Where most people in Dan's situation would simply rely on the State for support, Dan has not let his disability limit his aspirations; passing through higher education,

getting married and working as a Graphic Designer for the Neuromuscular Centre in Winsford.

- The family have supported Dan in seeking his independence whilst relying as little as possible on State support. To this end we feel it only fair that the LPA, on behalf of the State, should grant this application to enable Dan and his family to continue with their independent life in the face of severe disability.
- The proposed development is very modest, and is on the edge of an existing village whose community would welcome the return of this valued family. Therefore, whilst this application may not neatly fit the Local Plan and various legislative Policies, it is clearly evident that the applicant has gone to all possible lengths to conform, whilst being constrained by the requirements of his severe disability. We wish to highlight that in such highly exceptional circumstances the relevant planning policies need not be strictly applied.
- Given the overwhelming case provided in this application we request that the proposed development is APPROVED.

A letter has been received from the applicant's father making the following points:

- I would like to declare that I am Dan's father and would like to offer my obvious and natural support for the application that Dan has put forward for planning for a purpose built adapted affordable home.
- Dan who is severely handicapped by his condition is a very talented graphic designer. After obtaining his degree he married Karen his wife who works as a nurse at Leighton hospital.
- They have been looking for a bungalow within the village for several years to adapt, but with only a handful built none have come for sale. Ironically in recent months 3 have come up for sale but they are beyond the financial reach of these young people. In view of the circumstances they find themselves in the only way forward was for my wife and I to offer them a piece of ground on which they could build a purpose built bungalow.
- The proposed site is adjacent to Chapel Lane a quiet no through road. The loss of this small parcel of land will have minimum impact on the smallholding.
- On the other hand the benefits will be enormous to both families, Dan's brother suffers from the same condition and is also confined to a wheelchair and cannot look after himself.
- Despite my wife and I being pensioners we will be able to continue to offer support to both of our sons, whilst Dan and his family can maintain a degree of independence.

## **7. APPLICANT'S SUPPORTING INFORMATION:**

- Design and Access Statement
- Land Contamination Report
- Supporting Statement
- Summary Report

## **8. OFFICER APPRAISAL**

### **Main Issues**

The main issues are the principle of development, design and layout, impact on highway safety, living conditions, ecology, trees and landscape and contaminated land.

### **Principle of Development.**

The site is located in open countryside where there is a general presumption against new residential development, unless it falls within one of a number of categories, none of which include disabled persons accommodation. Consequently, there is a presumption against the proposal, under the provisions of sec.38(6) of the Planning and Compulsory Purchase Act 2004 which states that planning applications and appeals must be determined "*in accordance with the plan unless material considerations indicate otherwise*".

The applicant has argued that there are very exceptional personal circumstances associated with this proposal, which are a material consideration to outweigh the policy objection. Namely, the fact that he is unable to obtain suitable accommodation by utilising a suitably adapted existing property elsewhere within the Borough or by constructing a purpose built dwelling within the Settlement Zone Line or Infill Boundary Line of one of the Borough's Settlements.

Ministerial advice relating to the extent to which public opinion or personal pleading may be a material consideration is mainly to be found in "The Planning System: General Principles", which accompanies Planning Policy Statement 1 (April 2005). Para. 21 states that exceptionally the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the welfare of the local community, may be material to the consideration of a planning application. It is noted that in such circumstances a permission may be made subject to a condition that it is personal to the applicant. However, the guidance warns that such arguments will seldom outweigh more general planning considerations, which would include the strong presumption against new residential development in the open countryside.

This issue was considered at a Public Inquiry in 2006, relating to a very similar case, at Mill Run, in the former Congleton Borough. In this case the applicant's daughter's disability and housing needs were considered to be a material consideration, which had to be weighed in the balance against the planning policy presumption against residential development in the Open Countryside. However, in order to determine the weight to be given to those personal circumstances it was necessary to examine the reasonableness of the housing needs which were claimed by the Appellants and the criteria and the efforts employed by them to find suitable accommodation elsewhere.

The Appeal turned on whether the features of the proposed dwelling proposed by the Appellants were "essential" or "desirable" for their disabled daughter. Having considered this issue the inspector determined that, having regard to grants and other assistance

which were available to help the family to adapt a dwelling, the needs of the disabled person could be adequately met by an existing property.

In order to consider whether the requirements are indeed essential, a detailed understanding of the individual needs has to be appreciated and understood.

The applicant's supporting statement explains that he cannot walk or stand and uses a powered wheelchair, and an electric hoist to transfer to and from his wheelchair. Each morning he requires dressing, before being hoisted into his wheelchair. He requires help to be set up at the bathroom sink and to wash his hands, face, shave and brush his hair.

He cannot physically cook or prepare drinks and requires feeding. If he goes out he needs accompanying in case he slips in his wheelchair or has to negotiate slopes or rougher ground. He cannot drive but owns a van with a ramp which he requires assistance entering and securing the wheelchair with a clamp.

Currently his wheelchair does not fully meet his needs and he is quite limited with choice as to a replacement with his specific requirements.

He spends around 15 hours per day in his wheelchair so the correct choice of chair has to take priority. It is imperative that he achieves good posture, support, balance, mobility and pressure relief. The two chairs that he is considering, the Etac Balder Finesse and the Permobil C500, have many essential power features to enable comfort and required pressure relief; reclining back rest, tilting seat, adjustable leg rest and raising seat. These features however increase the weight and size and it is difficult to fit the chair into a smaller property.

Currently he uses an older through the floor lift, helping him access the upper floor. This lift has a maximum user weight (person and wheelchair) of 225kg, newer models can allow 250kg.

The wheelchair weighs 158kg and he is 99.6kg leaving the combined weight 257.6kg. This removes the option of such lifts pointing us to single storey living. Size is also an issue as the chairs measure 1150 x 650mm with a turning radius of 1110mm. When coupled with household furniture makes average room sizes and property layout a problematic issue. Consequently a single storey dwelling with generous room sizes is essential.

The applicant receives care from Cheshire West and Chester Council in the form of Direct Payments. This flexible scheme offers the freedom to purchase care to meet his needs up to 17 hours per week, this suits the constant varying nature of his wife's shifts well. He has not been informed of any plans to reduce his care, however, a worry in this current economic environment is council cuts, which have extended to varying forms of support and care of people with disabilities.

The applicant has chosen to employ a professional care agency called "Home Instead" to meet his needs. The majority of the time this service works very well, but there are some

occasions when the service breaks down and he is left without assistance, effectively stranded. The supporting statement covers in detail a number of instances including:

- May 2011 – Care booking system communication breakdown over Easter holiday period resulting in no carer being provided.
- June 2010 – Carer failed to attend resulting in the applicant's father having to drive over 20 miles to provide assistance.
- February 2009 – Applicant's wife inadvertently locked door when leaving for work resulting in carer being unable to gain entry resulting in wife needing to leave work
- 2009 - Carer overslept resulting in 45 minutes of acute concern.
- Equipment Failure - On two separate occasions my bathroom and bedroom ceiling hoists have failed resulting in the applicant being stranded in mid air with restricted breathing. He required cutting free from the sling, falling six inches jarring his spine on one occasion.
- Accident. Whilst dressing I have rolled out of bed onto the ground. Thankfully not injured but required assistance and was stranded on the floor for over 30 minutes.

When emergencies of the nature described above occur, the applicant is dependent upon assistance provided by his wife and parents. Consequently, it is essential to be located within a short response time of his parents' home in Ravensmoor.

In the light of the above, the following specification for a suitable property was produced.

Property Type:

- Single Storey
- Wheelchair requirements present problems using a through the floor lift and so accessing an upper floor.
- Safety / fire escape concerns also contribute to requirement for ground floor accommodation

Location:

- 2 miles / 7 minutes of parents home, Fields Farm in Ravensmoor.
- This is based upon emergency assistance that may be required in the event of lifting equipment failure, where welfare depends upon physical assistance which is greater than that which can be provided by the applicant's wife.

Driveway / Hard Standing:

- Level area to load wheelchair into the adapted van via a ramp.
- Access and parking is also an issue as the van is larger than many un-adapted family vehicles.
- Space required 3600mm x 5800mm.

Access:

- Many properties built before 2004 do not require flat main door access.
- Is space available for shallow ramp with flat top area at main door?
- 1:15 ratio is required.

Door width:

- Ideal clear opening of 900mm between door face and frame on all doors.

Outdoor Access:

- To gain access, paths around house require a minimum width of 900mm.

Internal Access:

- Is the property level throughout.

Room Circulation:

- Required wheelchair has a footprint of 750 x 1250mm with turning circle 1700mm.
- With furniture is there enough room freely move around?

3 Bedrooms:

- Family housing requirements need to cater for a master bedroom, family member and carer's room.

Master Bedroom Size:

- The large electric profiling bed measures 2400 x 2000mm. With room for wheelchair to manoeuvre the minimum size room required is 3510 x 3110mm plus other furniture. Layout may also dictate.

Bathroom:

- Is there a possibility of an en suite full bathroom (not just shower room) for privacy and ease of care?

Toilet Space:

- Require 800mm of left hand space from the centre of pan to side wall, plus suitable extra space for ceiling hoist tracking access to toilet, bath and wheelchair loading space.

Accessible Garden:

- A small area available, ideally easily accessed.

Safety Concerns:

- Fire escape options or other concerns.

Budget:

- £170,000.
- The applicant works as a graphic designer for a charity and his wife is a staff nurse at Leighton Hospital

The above requirements all appear to relate to basic necessities such as being able to wash, dress, eat, sleep and access the property and were drawn up based upon details in the Muscular Dystrophy Campaign's Adaptations Manual 2003. The applicant's



requirements have been endorsed by letters from Occupational Therapy, the University Hospital of North Staffordshire, Department of Respiratory Medicine and Shrewsbury and Telford Hospital. On this basis they are considered to be “essential” requirements of the dwelling rather than “desirable” luxuries.

The second question, therefore, is whether an existing property meeting these specifications or capable of suitable adaptation, or alternatively, a site within the settlement boundary, where such a dwelling could be constructed, can be identified.

The applicant has supplied details of all property that offered some potential to meet the identified specification as registered on the “Right Move” website area search feature from between February to April 2011. In total, 11 properties, and a building plot in Ravensmoor, have been scored against the criteria above. However, none met all of the essential requirements, whilst remaining within the set budget, particularly given the costs of necessary adaption which must be factored, to a greater or lesser extent, into most property prices. Of particular difficulty is the need to be within a few minutes response time (either in the car or on foot) of the applicant’s parents property within Ravensmoor. Clearly, properties and building plots in rural areas are scarcer and property prices tend to be higher than within urban areas.

It is therefore considered that the applicant has adequately demonstrated that there is no suitable alternative accommodation available in the vicinity that could meet the applicant’s requirements and that the only way in which his needs can be adequately catered for this through the construction of a new-build property adjacent to his parent’s house in Chapel Lane, Ravensmoor. Exceptionally, in this case, therefore, the appellants personal circumstances are considered to be a sufficient material consideration to outweigh the general presumption against new development in the open countryside as set out in the development plan.

## **Design and Layout**

The site is situated at the end of a row of detached dwellings forming a ribbon development along Chapel Lane. The proposed property would form a natural continuation of this row, and therefore would not appear isolated or out of place within the landscape or the form of the existing settlement. Furthermore, the site is a long narrow field which is well screened by existing hedgerows and trees to the east, west and south. These could be retained, protected and enhanced through the use of appropriate conditions. Consequently, the proposed dwelling would not appear highly prominent or visually intrusive within the landscape. Similarly conditions could be applied to require the planting of similar boundary fencing and landscaping on the more open boundary to the north.

With regard to elevational detail, the application is submitted in outline and only an indicative floorplan has been provided. The surrounding development comprises a mix of individually designed detached properties of varying architectural styles and it is therefore considered that an adequate design could be achieved which would respect the character and appearance of the property’s surroundings.

## **Highways**

The proposed dwelling would be accessed from the existing driveway to Fields Farm which runs from Chapel Lane, which is a single track road joins Swanley Lane, which is the main route through the village of Ravensmoor. The existing access already serves Fields Farm and is considered to be adequate to serve an additional dwelling. Chapel Lane, although narrow, is lightly used and serves 6 detached properties and a small cul-de-sac. It is not considered that the proposal for a single additional dwelling would raise any significant concerns in respect of traffic generation or highway safety. Adequate parking and turning space for the applicant's vehicle would be provided within the site and therefore the proposal would not result in any additional on-street parking which would be to the inconvenience of other residents or the detriment of highway safety.

The Strategic Highways Manager's comments were awaited at the time of report preparation and will be provided to Members at their meeting.

## **Living conditions**

With the exception of Fields Farm to the north and Chapel House to the east, the site is entirely surrounded by open countryside. Distances in excess of 50m will be maintained to both properties, which is considerably in excess of the 21m which is usually considered to be sufficient to maintain an adequate level of privacy and amenity between dwellings. Furthermore, a dense hedge provides a good level of screening between the site and Chapel House. The boundary to Fields Farm is an open post and rail fence but this could be enhanced through native hedge planting which could be secured by condition.

## **Ecology**

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places,

- in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment

and provided that there is

- no satisfactory alternative and
- no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK implements the Directive in the Conservation of Habitats & Species Regulations 2010 which contain two layers of protection

- a requirement on Local Planning Authorities (“LPAs”) to have regard to the Directive’s requirements above, and
- a licensing system administered by Natural England.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. “This may potentially justify a refusal of planning permission.”

PPS9 (2005) advises LPAs to ensure that appropriate weight is attached to protected species “Where granting planning permission would result in significant harm .... [LPAs] will need to be satisfied that the development cannot reasonably be located on any alternative site that would result in less or no harm. In the absence of such alternatives [LPAs] should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where ... significant harm ... cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented, adequately mitigated against, or compensated for, then planning permission should be refused.”

PPS9 encourages the use of planning conditions or obligations where appropriate and again advises [LPAs] to “refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.”

The converse of this advice is that if issues of detriment to the species, satisfactory alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

The Council’s Ecologist has examined the proposals and stated that he has no grounds to believe that valued habitats or protected species will be threatened by this proposed development.

### **Contamination**

The Council’s Environmental Health officer has commented that the application is for a new residential property which is a sensitive end use and could be affected by any contamination present. Therefore conditions are recommended requiring that, should any adverse ground conditions be found during the excavation works, all work in that area should cease and Environmental Health should be contacted for further advice. Subject to compliance with these conditions it is considered that the proposal will accord with the relevant development plan policies in respect of contaminated land.

### **Trees and Landscape**

The site is situated in open countryside, outside settlement boundaries. The landscape has no local or national landscape designation. The site is accessed along a narrow lane and is

reasonably well contained being bounded by established hedges on two sides, with two semi mature trees in the southern hedge. It is at the junction of public footpaths from which the site is visible. Given that existing trees and hedges are confined to the site boundaries and that the indicative layout demonstrates a reasonable separation distance from these features, the proposal is unlikely to have any significant impact on existing trees and hedges. The Council's Landscape Officer has examined the proposals and commented that in the event development was deemed acceptable she would recommend standard tree protection and landscape conditions.

## **9. CONCLUSIONS**

The proposal involves the erection of a new dwelling in the open countryside, which is contrary to established local plan policies. The bungalow is intended for occupation by the applicant, who is severely disabled. The Planning Acts state that development must be in accordance with the development plan unless material considerations indicate otherwise. Guidance within PPS1 states that personal circumstances can be a material consideration, but will seldom be of sufficient to outweigh established planning policies.

Previous appeal decisions have determined that the personal circumstances of disabled persons can be sufficient to outweigh local plan policies restricting new development in the open countryside, where it can be adequately demonstrated that the applicant's accommodation requirements are essential rather than merely desirable and that there are no suitable existing properties, or building plots in locations which were compliant with planning policy, which could fulfil those essential requirements.

In this case it is considered that the specification for the property drawn up by the applicant relates to basic necessities such as being able to wash, dress, eat, sleep and access the property and has been drawn up based upon details in the Muscular Dystrophy Campaign's Adaptations Manual 2003. On this basis they are considered to be "essential" requirements of the dwelling rather than "desirable" luxuries. The applicant has also adequately demonstrated that there is no suitable alternative accommodation available in the vicinity that could meet the applicant's requirements and that the only way in which his needs can be adequately catered for this through the construction of a new-build property adjacent to his parent's house in Chapel Lane, Ravensmoor. Exceptionally, in this case, therefore, the appellants personal circumstances are considered to be a sufficient material consideration to outweigh the general presumption against new development in the open countryside as set out in the development plan.

The proposal is acceptable in terms of design and layout, impact on highway safety, living conditions, ecology, trees and landscape and contaminated land and complies with the relevant local plan policies in this regard.

Therefore, for the reasons stated above and having due regard to the relevant local plan policies, and all other material considerations raised, the proposal is recommended for approval subject to appropriate conditions.

## **10. RECOMMENDATION**

**APPROVE** subject to the following conditions:

- 1. Reserved matters to be submitted**
- 2. Three years for the submission of reserved matters application**
- 3. Implementation within two years from approval of final reserved matters**
- 4. Submission and approval of materials**
- 5. All work to stop in the event of unforeseen land contamination and mitigation to be submitted**
- 6. Submission and approval of boundary treatment**
- 7. Submission and approval of landscaping scheme**
- 8. Implementation of landscaping scheme**
- 9. Submission of tree protection measures**
- 10. Implementation of tree protection**
- 11. Surface water drainage scheme in accordance with principles of sustainable drainage**
- 12. Scheme for the disposal of foul drainage**
- 13. Construction hours (and associated deliveries to the site) shall be restricted to 08:00 to 18:00 hours Monday to Friday, 09:00 to 14:00 hours Saturday, with no working Sundays or Bank Holidays.**
- 14. Remove Permitted Development rights**
- 15. Dwelling to be occupied by Mr. D. Cundall, spouse, family, dependents or carers only.**

